

original

4:21-CR-00259-RLW/JSRW

**RECEIVED**

AUG 20 2021

U. S. DISTRICT COURT  
EASTERN DISTRICT OF MO  
ST. LOUIS**Affidavit of Fact and Truth #2**

Kevin B. Gau has refused to file any pretrial applications challenging the subject matter jurisdiction of the plaintiff/court and has refused to file the Bill of Particulars addressing any of my concerns regarding the jurisdiction of the plaintiff/court (and many of my other concerns) which I have the right to challenge at any point up to 15 years in this case ! I have emailed Kevin B. Gau the proof of the laws and supreme court rulings of previous cases that support my request (I will attach the document I asked Kevin B. Gau to present as well) to no avail . Kevin B .Gau has only been willing to discuss the discovery of the case and has told me repeatedly that the prosecuting attorney (Linda Lane) is willing to discuss the facts of the case in exchange possible leniency later in this case.

Kevin Gau has told me (Xaiviar Brown) many of times verbally over the phone (I have proof of the recorded conversations ) and once in a face-to-face meeting that he is sure that the court/plaintiff has jurisdiction and that is "Not something he's willing to challenge on the record because his hands are tied (whatever that means lol.). I (Xaiviar Brown ) have also told and provided Kevin B. Gau proof of my authenticated birth certificate showing him that the name on my original birth certificate doesn't match the name that's printed on the Indictment as the defendant. Kevin B Gua has totally ignored any of my complaints and "ONLY" is willing to discuss the discovery in this case between me and prosecuting attorney (Linda Lane) .I (Xaiviar Brown ) have also pinpointed out to Kevin B. Gau the different discrepancies between both indictments (specifically number 1. on the first page under the section named Introduction, and on page 3. numbers 12.,16 and number 17 . filed in the court of records) Note: there are two different distinct indictments .The first indictment was left by the FBI. Agent (JOEL D. BINGAMAN) in my mailbox at 7910 Page ave .,St. Louis, MISSOURI 63133 and the second indictment has already been recorded in the clerk of courts records in this case .I have a certified copy of the one that was placed into the clerk of court records .( I will attach both indictments as proof along with this Affidavit of Truth And Fact). Kevin B. Gau has ignored my complaints and has told me that that is not grounds for him to file any applications challenging the plaintiff (on the record) about any of my concerns in this case," when clearly it is"! Kevin B. Gau is obviously not competent enough or is just unwilling to defend me in this case . I fear him working in collaboration with the prosecuting attorney (Linda Lane) in this case to convict me without defending me and any of my constitutional rights .Kevin B. Gau has also ignored my concerns to remove his entry plea of not guilty on my behalf without my voluntary consent during my initial zoom arraignment hearing ! Kevin B. Gau has demanded me to leave his office in a face-to-face interview after I requested him to provide me with laws that prove that the plaintiff/court has lawful subject matter jurisdiction in this case . I (xaiviar brown) " am under extreme duress" and am being coerced and forced into an involuntary plea agreement without lawful representation BY Kevin B. Gau ,

FURTHER AFFIANT SAITH NOT.

I declare under the penalty of bearing false witness before God and Men as recognized under the laws in and for The State of MISSOURI , the Laws of the United States of America and the Law of Nations, acting with sincere intent and full standing in law, do herewith certify and state that the foregoing contents are true, correct, complete, certain, admissible as evidence, and not intended to mislead anyone, and that xaiviar brown executes this document in accordance with xaiviar brown best knowledge and understanding without dishonor, without recourse; with All rights reserved, without prejudice.

As done this 13<sup>th</sup> day of August in the year 2021 under penalty of perjury under the laws of the United States of America.

x Xaiviar Brown

By: xaiviar brown

Duly sworn this 13<sup>th</sup> day of August, 8/12/2021

STATE OF MISSOURI)

) JURAT

COUNTY OF Saint Louis )

Before me the undersigned, a Notary acting within and for the County of Saint louis and State of Mo. on this 13<sup>th</sup> day of August, 8/12/2021, personally appeared and known to me - or proved to me on the basis of satisfactory evidence to be the person whose names is subscribed to the within instrument, to be the identical Man , xaiviar brown, who being duly sworn, declared the above to be true, correct, and not meant to mis-lead, to the best of his firsthand knowledge, understanding, and belief, by his free will and voluntary act and deed by his signature on the foregoing document, executed the within instrument.

Given under my hand and seal this 13<sup>th</sup> day of August, 8/12/2021.

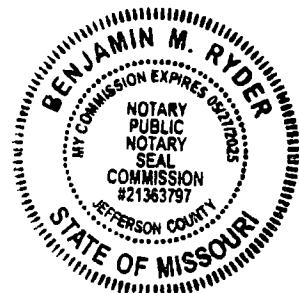
Benjamin Ryder

Notary Signature

Seal

Benjamin Ryder

Printed Notary Name



My commission expires 5/27/2025

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AUG 20 2021

U. S. DISTRICT COURT  
EASTERN DISTRICT OF MO  
ST. LOUIS

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## FEDERAL RULES OF CRIMINAL PROCEDURE

**Rule 12**

**(g) Recording the Proceedings.** The proceedings during which the defendant enters a plea must be recorded by a court reporter or by a suitable recording device. If there is a guilty plea or a nolo contendere plea, the record must include the inquiries and advice to the defendant required under Rule 11(b) and (c).

**(h) Harmless Error.** A variance from the requirements of this rule is harmless error if it does not affect substantial rights.

(As amended Feb. 28, 1966, eff. July 1, 1966; Apr. 22, 1974, eff. Dec. 1, 1975; Pub. L. 94-64, §3(5)-(10), July 31, 1975, 89 Stat. 371, 372, eff. Aug. 1 and Dec. 1, 1975; Apr. 30, 1979, eff. Aug. 1, 1979, and Dec. 1, 1980; Apr. 28, 1982, eff. Aug. 1, 1982; Apr. 28, 1983, eff. Aug. 1, 1983; Apr. 29, 1985, eff. Aug. 1, 1985; Mar. 9, 1987, eff. Aug. 1, 1987; Pub. L. 100-690, title VII, §7076, Nov. 18, 1988, 102 Stat. 4406; Apr. 25, 1989, eff. Dec. 1, 1989; Apr. 26, 1999, eff. Dec. 1, 1999; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 30, 2007, eff. Dec. 1, 2007; Apr. 16, 2013, eff. Dec. 1, 2013.)

**Rule 12. Pleadings and Pretrial Motions**

**(a) Pleadings.** The pleadings in a criminal proceeding are the indictment, the information, and the pleas of not guilty, guilty, and nolo contendere.

**(b) Pretrial Motions.**

**(1) In General.** A party may raise by pretrial motion any defense, objection, or request that the court can determine without a trial on the merits. Rule 47 applies to a pretrial motion.

**(2) Motions That May Be Made at Any Time.** A motion that the court lacks jurisdiction may be made at any time while the case is pending.

**(3) Motions That Must Be Made Before Trial.** The following defenses, objections, and requests must be raised by pretrial motion if the basis for the motion is then reasonably available and the motion can be determined without a trial on the merits:

(A) a defect in instituting the prosecution, including:

- (i) improper venue;
- (ii) preindictment delay;
- (iii) a violation of the constitutional right to a speedy trial;
- (iv) selective or vindictive prosecution; and
- (v) an error in the grand-jury proceeding or preliminary hearing;

(B) a defect in the indictment or information, including:

- (i) joining two or more offenses in the same count (duplicity);
- (ii) charging the same offense in more than one count (multiplicity);
- (iii) lack of specificity;
- (iv) improper joinder; and
- (v) failure to state an offense;

(C) suppression of evidence;

(D) severance of charges or defendants under Rule 14; and

(E) discovery under Rule 16.

**(4) Notice of the Government's Intent to Use Evidence.**

**(A) At the Government's Discretion.** At the arraignment or as soon afterward as practicable, the government may notify the defendant of its intent to use specified evidence at

Proof to Challenge  
Jurisdiction

**Rule 12.1 FEDERAL RULES OF CRIMINAL PROCEDURE**

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trial in order to afford the defendant an opportunity to object before trial under Rule 12(b)(3)(C).

(B) *At the Defendant's Request.* At the arraignment or as soon afterward as practicable, the defendant may, in order to have an opportunity to move to suppress evidence under Rule 12(b)(3)(C), request notice of the government's intent to use (in its evidence-in-chief at trial) any evidence that the defendant may be entitled to discover under Rule 16.

**(c) Deadline for a Pretrial Motion; Consequences of Not Making a Timely Motion.**

(1) *Setting the Deadline.* The court may, at the arraignment or as soon afterward as practicable, set a deadline for the parties to make pretrial motions and may also schedule a motion hearing. If the court does not set one, the deadline is the start of trial.

(2) *Extending or Resetting the Deadline.* At any time before trial, the court may extend or reset the deadline for pretrial motions.

(3) *Consequences of Not Making a Timely Motion Under Rule 12(b)(3).* If a party does not meet the deadline for making a Rule 12(b)(3) motion, the motion is untimely. But a court may consider the defense, objection, or request if the party shows good cause.

(d) *Ruling on a Motion.* The court must decide every pretrial motion before trial unless it finds good cause to defer a ruling. The court must not defer ruling on a pretrial motion if the deferral will adversely affect a party's right to appeal. When factual issues are involved in deciding a motion, the court must state its essential findings on the record.

(e) [Reserved]

(f) *Recording the Proceedings.* All proceedings at a motion hearing, including any findings of fact and conclusions of law made orally by the court, must be recorded by a court reporter or a suitable recording device.

(g) *Defendant's Continued Custody or Release Status.* If the court grants a motion to dismiss based on a defect in instituting the prosecution, in the indictment, or in the information, it may order the defendant to be released or detained under 18 U.S.C. § 3142 for a specified time until a new indictment or information is filed. This rule does not affect any federal statutory period of limitations.

(h) *Producing Statements at a Suppression Hearing.* Rule 26.2 applies at a suppression hearing under Rule 12(b)(3)(C). At a suppression hearing, a law enforcement officer is considered a government witness.

(As amended Apr. 22, 1974, eff. Dec. 1, 1975; Pub. L. 94-64, § 3(11), (12), July 31, 1975, 89 Stat. 372, eff. Dec. 1, 1975; Apr. 28, 1983, eff. Aug. 1, 1983; Mar. 9, 1987, eff. Aug. 1, 1987; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 25, 2014, eff. Dec. 1, 2014.)

**Rule 12.1. Notice of an Alibi Defense**

**(a) Government's Request for Notice and Defendant's Response.**

(1) *Government's Request.* An attorney for the government may request in writing that the defendant notify an attorney

MUST  
RESPOND  
BY [REDACTED]

CJA 23  
 (Rev. 11/11)

## FINANCIAL AFFIDAVIT

IN SUPPORT OF REQUEST FOR ATTORNEY, EXPERT, OR OTHER SERVICES WITHOUT PAYMENT OF FEE

IN THE UNITED STATES  DISTRICT COURT  COURT OF APPEALS  OTHER (Specify below)  
 IN THE CASE OF \_\_\_\_\_ v. \_\_\_\_\_

LOCATION NUMBER \_\_\_\_\_

FOR \_\_\_\_\_

AT \_\_\_\_\_

PERSON RECEIVED (Show your full name)

AUG 20 2021

U. S. DISTRICT COURT  
 EASTERN DISTRICT OF MO  
 ST. LOUIS

CHARGE/OFFENSE (Describe if applicable & check box →)

Felony  
 Misdemeanor

- |                            |                             |
|----------------------------|-----------------------------|
| 1 <input type="checkbox"/> | Defendant - Adult           |
| 2 <input type="checkbox"/> | Defendant - Juvenile        |
| 3 <input type="checkbox"/> | Appellant                   |
| 4 <input type="checkbox"/> | Probation Violator          |
| 5 <input type="checkbox"/> | Supervised Release Violator |
| 6 <input type="checkbox"/> | Habeas Petitioner           |
| 7 <input type="checkbox"/> | 2255 Petitioner             |
| 8 <input type="checkbox"/> | Material Witness            |
| 9 <input type="checkbox"/> | Other (Specify) _____       |

DOCKET NUMBERS
Magistrate Judge
District Court
Court of Appeals

### ANSWERS TO QUESTIONS REGARDING ABILITY TO PAY

EMPLOY- MENT	Are you now employed? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Self-Employed			
	Name and address of employer: _____			
	IF YES, how much do you earn per month? \$ _____	IF NO, give month and year of last employment? _____ How much did you earn per month? \$ _____		
If married, is your spouse employed? <input type="checkbox"/> Yes <input type="checkbox"/> No	IF YES, how much does your spouse earn per month? \$ _____	If you are a minor under age 21, what is the approximate monthly income of your parent(s) or guardian(s)? \$ _____		
INCOME & ASSETS	Have you received within the past 12 months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, retirement or annuity payments, or other sources? <input type="checkbox"/> Yes <input type="checkbox"/> No			
	OTHER INCOME	RECEIVED IF YES, give the amount \$ _____ received and identify the sources \$ _____	SOURCES _____	
CASH	Do you have any cash on hand or money in savings or checking accounts? <input type="checkbox"/> Yes <input type="checkbox"/> No IF YES, total amount? \$ _____			
PROP- ERTY	Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? <input type="checkbox"/> Yes <input type="checkbox"/> No			
	IF YES, give value and description for each \$ _____ \$ _____ \$ _____	VALUE _____	DESCRIPTION _____	
OBLIGATIONS & DEBTS	DEPENDENTS	MARITAL STATUS Single _____ Married _____ Widowed _____ Separated or Divorced _____	Total _____ No. of _____ Dependents _____	List persons you actually support and your relationship to them _____
	DEBTS & MONTHLY BILLS (Rent, utilities, loans, charge accounts, etc.)	DESCRIPTION _____	TOTAL DEBT \$ _____ \$ _____ \$ _____ \$ _____	MONTHLY PAYMENT \$ _____ \$ _____ \$ _____ \$ _____

I certify under penalty of perjury that the foregoing is true and correct.

*Without Prejudice VCL 1-308*

SIGNATURE OF DEFENDANT  
 (OR PERSON REPRESENTED)

Date

RECEIVED

AUG 20 2021

U.S. DISTRICT COURT  
EASTERN DISTRICT OF MO  
ST. LOUIS

I Xaiviar from the house of brown declare that I am a USA. National  
and I am "NOT" a US. citizen according to the 14th amendment! xb.

Refer to my certificate of  
live birth to as proof of Id.

## PRETRIAL SERVICES

Refer to my Certificate of living . NOTICE TO DEFENDANT  
birth as to proof of my lawful name for Id.

Defendant: Xaiviar brown  
Print Name (First, Middle, Last)

Pretrial Services Officer:

Print Name

A pretrial services officer would like to ask you some questions. The pretrial services officer is not your lawyer and works for the judge. Your answers to the questions will be used by the judge to decide whether you should be released or kept in jail pending any further proceedings. The questions are not about the charges pending against you, and you should not talk about the charges at this time. You are under no obligation to provide any information and you have the right to choose which, if any, questions you want to answer.

You have the right to speak with a lawyer before answering any questions. You also have the right to have a lawyer present with you if you choose to answer any questions. If you cannot afford a lawyer, one will be appointed to represent you. Asking for a lawyer will not hurt your chance for pretrial release.

The questions the pretrial services officer would like to ask are about your residence, family history, employment history, financial information, physical and mental health, as well as your criminal history. The information will be made available to the judge, to your attorney, and to the prosecuting attorney.

Any information you provide should be truthful. Providing false information is a separate crime and could be used to deny your release before trial or increase your sentence if you're convicted.

If you are found guilty, either after trial or after pleading guilty, your answers to the interview questions will be available to a U.S. Probation officer for the purpose of preparing a presentence report and may affect your sentence in this or another case.

*without Prejudice  
UCC1-308 annexed*

This form has been read to me, and I understand what it means. \_\_\_\_\_ (Defendant's Initials)

I want a lawyer during this interview.

*without  
Prejudice UCC1-308  
UCC1-308 annexed*

DATE: \_\_\_\_\_

*without Prejudice  
UCC1-308 annexed*

*Defendant's signature*

"I do not consent"

*Pretrial Services Officer signature*

"All Rights Reserved"

*V.L.*

TRADUCCIÓN / Translation

EDMO mayo 2017

EDMO MAYO 2017  
EDMO MAYO 2017  
EDMO MAYO 2017

## SERVICIOS PREVIOS AL JUICIO

### NOTIFICACIÓN A LOS ACUSADOS

Acusado \_\_\_\_\_

Agente de servicios previos al juicio \_\_\_\_\_

Nombre completo y apellidos (en letra de imprenta)

Nombre en letra de imprenta

Un agente de la oficina de servicios previos al juicio le hará unas preguntas. El agente no es su abogado, sino que trabaja para el juez que tomará en cuenta sus respuestas al decidir si a usted lo dejarán salir en libertad provisional previa al juicio, o si tendrá que permanecer en la cárcel mientras esté pendiente este proceso. **No le preguntarán nada acerca de lo que se le acusa, y es importante que en este momento no diga nada al respecto.** Como usted no está obligado a dar ninguna información, tiene el derecho de decidir si va a responder a las preguntas y a cuáles responderá.

Tiene el derecho de hablar con un abogado antes de contestar cualquier pregunta y también de que su abogado esté con usted si decide contestar algo. Si no puede pagar por su propio abogado, se le nombrará a uno de oficio para que lo asesore. **El pedir un abogado no perjudicará sus posibilidades de salir en libertad provisional previa al juicio.**

El agente de servicios previos al juicio le preguntará sobre su domicilio, su familia, su historial laboral, su situación económica, su estado físico y mental y sobre sus antecedentes penales, y toda esta información estará a disposición del juez, de su abogado y del fiscal.

Tiene que decir la verdad, puesto que dar información falsa constituye un delito aparte y podría usarse para negarle la libertad provisional previa al juicio o para aumentar la sanción si llegaran a condenarlo.

Si a usted lo declaran culpable, ya sea después de ir a juicio o después de admitir su culpabilidad, las respuestas que haya dado en esta entrevista las usará un agente de la Oficina de Condena Condicional de los EE. UU. para preparar un informe precondenatorio que podría afectar la sanción que usted reciba en este o en algún otro caso.

Me leyeron el formulario y entiendo lo que dice \_\_\_\_\_ (iniciales del acusado)

\_\_\_\_\_ Quiero que mi abogado esté presente durante la entrevista.

\_\_\_\_\_ No es necesario que mi abogado esté presente durante la entrevista.

FECHA: \_\_\_\_\_

*Firma del acusado*

*Firma del agente de servicios previos al juicio*